Supreme Court, U.S.
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No. 93-1287

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

RAY L. LEFLORE, individually and as a partner of PAVELIC & LEFLORE (now dissolved),

Petitioner,

vs.

THE MARVEL ENTERTAINMENT GROUP, a division of CADENCE INDUSTRIES CORPORATION, JAMES GALTON, AL BRODAX, MICHAEL S. KLEIN, THE SHUKAT COMPANY, LTD., SCOTT SHUKAT and PETER S. SHUKAT, ESQ.

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

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BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Petition herein (or at least Questions I and II at p. i of the Petition) is untimely within the meaning of Rule 13.1, as it seeks review of rulings contained in the decision of the Second Circuit Court of Appeals dated August 12, 1988, set forth in Appendix A (1a - 71a).

2. Whether petitioner has waived his opportunity to seek certiorari by not having done so in conjunction with the petition by Pavelic & LeFlore that led to this Court's decision set forth in Appendix D (160a - 170a).

3. Whether the unique facts of this case --in which a plaintiff and his attorney, the petitioner, survived a motion for summary judgment, and thereafter prolonged this litigation for several years, by making false and ungrounded

assertions that the plaintiff's signature on certain agreements had been forged by the defendants, agreements which provided a complete defense to those defendants in this litigation -- provide special and important reasons to warrant review by this Court.

4. Whether the rulings pursuant to Fed.R. Civ.P. 11 in this unique case, which are not in conflict with that Rule, or with any other Federal Rules or decisions, were an abuse of discretion, and otherwise provide special and important reasons for this Court to review them.

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JURISDICTION

Petitioner's jurisdictional statement, on page 1 of the Petition for Writ of Certiorari, fails to mention that the original judgment of the Court of Appeals was entered August 12, 1988 (Appendix A). Petitioner did not seek certiorari with respect to that judgment until now - 6 years later - although petitioner's law firm, Pavelic & LeFlore, sought and was granted certiorari, which led to this court's opinion of December 5, 1989 (Appendix D). Since the instant Petition effectively seeks review of rulings made by the Second Circuit Court of Appeals in its August 12, 1988 opinion, it is untimely under Rule 13.1.

STATEMENT OF THE CASE

The undersigned, admitted to

practice before this Court, has been involved in this case for 12 years, as has petitioner. In his Petition, Mr. LeFlore continues his 12 year pattern of behavior by omitting material facts and misstating the facts and the law applicable to this case. This brief does not purport to take issue with every incorrect statement in Mr. LeFlore's Petition. To do so would exceed this Court's page limitations. Only the most significant ones are dealt with.

The original complaint in this action sought $11 million in compensatory damages and $33 million in punitive damages, on behalf of plaintiff Calloway, against The Marvel Entertainment Group,[1]

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[1]Pursuant to Rule 29.1, The Marvel Entertainment Group is a subsidiary of MacAndrews & Forbes Holdings, Inc.

James Galton, Al Brodax (the "Marvel defendants") and other defendants, including Michael Klein and Peter Shukat, Esq., who had been Mr. Calloway's lawyer for more than 10 years prior to the commencement of this action in 1982. The central claim in the original complaint was that the defendants had infringed Calloway's copyright in The Skyrider (a draft motion picture screenplay) by making unauthorized changes in it and distributing it to certain third parties without proper authorization.

Annexed as exhibits to the original complaint, which was signed by petitioner, were certain written agreements dated June 8, 1981 which were signed by Calloway, the plaintiff (the "June 8, 1981 agreements"). The complaint alleged that:

> "...plaintiff [Calloway] and Klein and Quiros...entered into a series of agreements, memorializing their respective rights and obligations ...Copies of the foregoing agreements are attached as exhibit C [the June 8, 1981 agreements]."

What petitioner apparently failed to recognize at the time was that these very agreements provided a complete defense to Calloway's claims, since they contained a provision embodying Calloway's authorization to permit defendants to make changes in The Skyrider and to distribute it to third parties, thus negating the claim of copyright infringement and unauthorized use.

After this defense was brought to Mr. LeFlore's attention during the course of a motion for dismissal on that ground in early 1983, Mr. LeFlore did something that triggered the chain of

events that led to the Rule 11 award herein. He prepared and served an amended complaint, once again signed by him, seeking the same monetary damages and making the same central claim of copyright infringement. The amended complaint, however, no longer annexed the June 8, 1981 agreements as exhibits. Instead, a new series of allegations was made in the amended complaint, namely, that Calloway's signature on the June 8, 1981 agreements had been forged by Peter Shukat, his attorney for more than 10 years.[2] The complaint further alleged that Peter Shukat had been "solicited" to do this "at Marvel's behest" and accused all of the defendants of conspiring to

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[2]The word "forgery" is carefully omitted from the Petition, except for one backhanded reference on p. 27.

create "a series of false and deceptive agreements." This amended complaint was the first of no less than 7 papers signed by Mr. LeFlore and submitted to the District Court over a span of 3 years (1983-1986) in violation of Rule 11 in this litigation.

Later in 1983 another motion to dismiss was made by various defendants, and was granted by Judge Sweet with respect to certain defendants (the Shukat defendants and Dumler & Giroux) because of the absence of a sufficiently pleaded federal jurisdictional basis as to those defendants. In connection with this motion, Mr. LeFlore submitted a Memorandum of Law dated October 19, 1983 which was signed by him and in which he reiterated the allegations of forgery of Calloway's signature on the June 8, 1981

agreements. Judge Sweet denied the motion to dismiss as to the Marvel defendants.

The dismissed defendants (the Shukat defendants and Dumler & Giroux) were impleaded back into the action as third party defendants by the Marvel defendants in early 1984 (not on the eve of trial, as suggested by petitioner). This was done for one reason only: if the allegations in the amended complaint were true, and if the June 8, 1981 agreements were unavailing because of the forgery of Calloway's signature, the Marvel defendants might well have a proper claim over against the third party defendants. Mr. LeFlore himself later conceded this in a reply memorandum of law signed by him, dated May 3, 1984, in which he said:

> "Once it is shown, as it already has been, that plaintiff did not sign or approve any such documents [the June 8, 1981 agreements], defendants' only recourse is to claim over against those individuals who either forged plaintiff's signature or represented they were authorized to sign for him. Defendants' third party complaints against Scott Shukat, Peter Shukat and Dumler & Giroux...perfectly mirror plaintiff's claims..."

The Certiorari Petition, at pages 25-26, misstates the foregoing series of events.

In the spring of 1984, the Marvel defendants moved for summary judgment on the basis of the June 8, 1981 agreements. Four papers were submitted by Mr. LeFlore in opposition to this motion:

> 1) a memorandum of law dated April 2, signed by LeFlore,
> 2) a Rule 3(g) statement dated April 3, 1984 signed by LeFlore[3],

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[3]In the Southern District of New York, local Civil Rule 3(g) requires the submission by counsel, on a motion for summary judgment, of a statement setting

3) a reply memorandum of law dated May 3, 1984 signed by LeFlore,
4) an affidavit dated April 2, 1984 signed by Calloway.

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forth those material facts as to which it is contended that there is no genuine issue to be tried. Mr. LeFlore's 3(g) statement contended that the issue of forgery was such an issue. Local Civil Rule 3(b) requires the submission of a memorandum of law in connection with any motion. Failure to comply with either Rule 3(b) or 3(g) is a basis for denial of the motion, in the case of a movant, or the granting of the motion, in the case of the party in opposition. Rule 3(b) provides in pertinent part:

> "Upon any motion the moving party shall serve and file with the motion papers a memorandum setting forth the points and authorities relied upon in support of the motion...Failure to comply may be deemed sufficient cause for the denial of the motion..."

Rule 3(g) provides in pertinent part:

> "Upon any motion for summary judgment..., there shall be annexed to the notice of motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement constitutes grounds for denial of the motion..."

Each of these papers advanced the baseless contention that Calloway's signature on the June 8, 1981 agreements had been forged.

Mr. Calloway's April 2, 1984 affidavit, undoubtedly prepared by Mr. LeFlore (37a), who was then a single practitioner, stated in paragraph 7 that he had "neither signed nor approved" the June 8, 1981 agreements, which "were forged and contrived to deceive."

LeFlore's April 2, 1984 memorandum of law (the same date as Calloway's affidavit) stated on page 6:

> "The only basis on which defendants could hope to obtain summary judgment in their favor is their claim that plaintiff signed or approved the agreements on which they purport to rely.
>
> Plaintiff's affidavit, sworn to April 2, 1984, unequivocally attests that he neither signed nor approved the

agreements upon which defendants purport to rely.

* * *

There could be no clearer statement that defendants have nothing authentic on which to rely."

Because an "issue of fact" was thus raised, the District Court (Judge Robert W. Sweet) denied the motion for summary judgment, but specifically warned Calloway and LeFlore about sanctions under Rule 11:

"Calloway does not dispute defendants' contentions that the terms of the [June 8, 1981 agreements] would authorize defendants' acts, but states by affidavit that he never signed or approved the Option Agreement and that Peter Shukat, without Calloway's knowledge, affixed a facsimile of Calloway's signature to the agreement.

* * *

Calloway has by a narrow margin put sufficient facts in contention to withstand defendants' summary judgment motion. However, Calloway should be aware that this Court has awarded attorney's fees against the plaintiff who was found after trial

> to have pursued a claim in bad faith and without factual support...The Court will not hesitate to award such costs if the facts are found after trial to warrant such an award".

The District Court's warning went unheeded, as Calloway and LeFlore pursued their baseless contention for yet another two years.

Although the accusation of forgery was first made in Mr. LeFlore's amended complaint in mid-1983, he did not see fit to consult a handwriting expert - Pearl Tytell - until November 1984. Ms. Tytell provided no support for the claim of forgery (25a). Nevertheless, at a transcribed conference before the District Court on December 5, 1984, the following colloquy took place between District Judge Robert Sweet and Mr. LeFlore:

"The Court: So your position is that the signature on the document is a fake?

Mr. LeFlore: Yes.

The Court: And it was put on by somebody else in some device, as, obviously, in your view, by definition, unknown. He can say, 'yes, this appears to be my signature, but I didn't sign that document, somebody must have jimmied the document.'

Mr. LeFlore: Yes.

As indicated above, the forgery claim was variously referred to as the "facsimile" claim as well. In interrogatory responses dated June 3, 1985, signed by both Mr. LeFlore and Mr. Calloway, they asserted that the June 8, 1981 agreements

> "...evidence the affixation of a facsimile of plaintiff's signature thereto and evidence defendants' fraudulent intent in respect thereto...Plaintiff did not sign such

documents."[4]
Then, in March 1986, in a proposed pre-trial order, signed by Mr. LeFlore, he once again reiterated the allegations of forgery set forth in the amended complaint.

Shortly thereafter, literally on the eve of trial which began in early April 1986, Mr. LeFlore purportedly abandoned the forgery or facsimile claim by making no reference to it in a letter amending his pre-trial order, and instead relying upon a "white-out claim", which turned out to be complete nonsense (see 112a-113a, 28a and 36a).

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[4]Illustrative of Petitioner's seeming inability to cope with the truth, six weeks earlier he had signed interrogatory responses dated April 22, 1985 in which he stated:
"Plaintiff has never alleged any forgery of plaintiff's signature".
The Court of Appeals observed in its 1988 decision that "...LeFlore takes the astonishing position that he never advanced the facsimile [forgery] claim..." 854 F.2d at 1456.

Although the jury trial in this case took six weeks and spanned several thousand pages of testimony and several hundred exhibits, the jury returned a verdict in favor of defendants in the remarkably short time of 6 hours.

Not only had the District Court warned Calloway and LeFlore about the imposition of sanctions under Rule 11 in its July 3, 1984 decision denying summary judgment, but numerous warnings were given to Mr. LeFlore by the undersigned and by other defendants' counsel in 1984, 1985 and through the trial of this case in 1986. These warnings were ignored as he pursued his baseless claims.

Following the trial, all defendants moved for Rule 11 sanctions, submitting extensive supporting affidavits and exhibits, including their invoices for legal fees aggregating nearly $1 million (56a, 130a). Despite

an obvious conflict, Mr. LeFlore continued to represent Mr. Calloway in the course of the Rule 11 proceeding (53a). Neither Mr. LeFlore nor Mr. Calloway submitted an affidavit disputing the facts or contentions of the defendants' motion papers. Nor did they contest or dispute the amount of the defendants' legal fees, or submit any evidence concerning their financial well-being. Judge Sweet held a hearing on the Rule 11 motions and no testimony was proffered by either Mr. LeFlore or Mr. Calloway.

Following the hearing, Judge Sweet issued a lengthy opinion (appendix B) in which he imposed sanctions of $100,000 against Calloway and $100,000 against LeFlore, of which $50,000 was to be joint and several against Mr. LeFlore's then law firm, Pavelic &

LeFlore.[5] This award represented approximately 20% of the defendants' aggregate defense costs and was to be shared by them pro rata according to the amount each expended in defense costs. A judgment reflecting this award was signed by the District Court on January 30, 1987 and filed February 2, 1987.

Both LeFlore and Pavelic & LeFlore appealed to the Second Circuit from the imposition of sanctions. Calloway took a pro se appeal, which was dismissed for his failure to prosecute it, but was sua sponte reinstated by the Court of Appeals in the course of its decision dated August 12, 1988 (49a - 55a). The Marvel defendants also took a cross appeal, seeking, inter alia, an increase in the amount of sanctions that had been imposed against LeFlore, Pavelic

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[5]Following this award, LeFlore ceased representing Calloway.

& LeFlore and Calloway.

The Second Circuit affirmed the result reached by Judge Sweet, but found that there had been a clear conflict of interest in LeFlore's having represented Calloway in the Rule 11 proceeding and, for this reason, vacated the $100,000 sanctions award against Calloway, and remanded the matter to the District Court to determine whether to reimpose some or all of the $100,000 sanctions against Calloway, and whether to make Mr. LeFlore and Pavelic & LeFlore jointly and severally liable for some or all of those sanctions (49a - 59a).

Pavelic & LeFlore subsequently sought and was granted certiorari by this Court. Mr. LeFlore did not then seek certiorari with respect to the Second Circuit's decision of August 12, 1988, although he purports to do so now. In its December 5, 1989 opinion, this Court

determined that Rule 11, as it was then constituted (appendix G), did not permit the award of sanctions against a law firm, but only against an individual attorney who was a signatory of the offending papers (appendix D).[6]

Thereafter, a remand hearing was held before Judge Sweet on July 29, 1991, as directed by the Second Circuit's decision of August 12, 1988 (Appendix A), as modified by this Court's opinion (Appendix G). Despite an invitation to do so by Judge Sweet, LeFlore offered no current evidence with respect to his financial condition (179a, 191a).[7] In

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[6]Rule 11 has since been amended (Appendix H). Among the amendments is the power to impose sanctions against the law firm.

[7]"THE COURT: Do you make any representation as to your assets now?"
MR. LEFLORE: As of today?
THE COURT: As of now.
MR. LEFLORE: No, your Honor."

addition, contrary to petitioner's assertion, Dr. Butz, who was questioned by Mr. LeFlore at the remand hearing, was never asked and never testified about Calloway's mental condition in 1983, 1984 and 1985, the crucial pre-trial period of this lawsuit (178a - 179a, 191a).

Following that hearing, Judge Sweet rendered a decision (appendix F) in which he reinstated the $100,000 in sanctions as against Calloway (now the estate of Calloway) and imposed them jointly and severally as against LeFlore. LeFlore thereafter took an appeal to the Second Circuit, which rendered a decision (appendix E) affirming the District Court, except, in part, with respect to the award of interest. The issue of interest has not been raised by petitioner in his Petition for Certiorari.

REASONS FOR DENYING THE WRIT

For the reasons hereinafter stated, it is respectfully submitted that this Court should not grant the Writ of Certiorari sought in this case.

A. Untimeliness and Waiver

In order to obtain review of a judgment, a Petition for a Writ of Certiorari must be filed within 90 days after the entry of judgment, pursuant to Rule 13.1 of this Court's Rules. The Petition herein repeatedly challenges and seeks review of rulings contained in the Second Circuit's decision of August 12, 1988, which is prominently included as Appendix A. Questions I and II on p. i of the Petition clearly relate only to the Second Circuit's decision of August 12, 1988. Petitioner had the opportunity to seek certiorari with respect to these rulings when his law firm sought review

of them, leading to this Court's decision of December 5, 1989, included as Appendix D. Not having done so in 1988, Petitioner has waived the right, and his attempt to do so at this juncture is untimely. Accordingly, the Petition for Certiorari should be dismissed on that basis.

B. The unique facts of this case do not raise any special and important reasons to warrant review by this Court.

It is difficult to imagine a more egregious violation of Rule 11 than that engaged in by petitioner. Without any reasonable inquiry as to whether the claim of forgery was well grounded in fact, petitioner made and repeated that serious assertion in a series of papers all signed by him and filed with the District Court: the amended complaint in mid-1983, a memorandum of law in October 1983, summary judgment papers in

April 1984, interrogatory answers in 1985 (after having been told by the handwriting expert, belatedly hired by him, that there was no basis for the claim of forgery), and a pre-trial order on the eve of trial in 1986.

The gravity of petitioner's conduct, which clearly caused unnecessary delay and a needless and substantial increase in the cost of the litigation, was compounded by the fact that the very documents, which he repeatedly asserted contained the forged signature of his client, had been annexed by petitioner to the original complaint (signed by petitioner), and were alleged then to be the bona fide agreements between his client and the defendants. Seven months later, these very same agreements were suddenly unreliable because Calloway's signature on them had been "forged". Without any basis whatsoever and without

any pre-litigation inquiry, petitioner facilely accused his client's prior lawyer of 10 years (Peter Shukat) of having committed the forgery, in conspiracy with and at the urging of the other defendants.

Petitioner's brazen and false assertions continued over a period of 3 years, despite repeated warnings from both defendants' counsel and the District Court about the imposition of sanctions pursuant to Rule 11.

Petitioner's conduct has now been the subject of scrutiny in two District Court decisions and two Court of Appeals decisions. All four decisions have resoundingly concluded that petitioner's conduct was in violation of Rule 11 and that the sanction imposed was appropriate and consistent with the purposes of Rule 11. There are simply no special or important reasons for this

Court to review petitioner's conduct as well.

C. The rulings below were not an abuse of discretion, and there is no conflict between the Federal Rules or among the Circuits, raised by this case, which needs to be resolved by this Court.

Aware of the most common basis for the granting of certiorari by this Court, petitioner attempts to fashion a conflict between the Federal Rules and/or among the Circuits. Petitioner's assertions of conflict are as baseless as were his assertions of forgery.

The essence of petitioner's argument is that -- because his false assertions of forgery created "an issue of fact", which enabled him and his client to survive a motion for summary judgment and thereafter to prolong this litigation for several more years on the strength of repeated assertions of forgery -- that should somehow immunize

him from Rule 11 sanctions. The bottom line of petitioner's argument is that rogues should be rewarded for their duplicity and dishonesty. To put it another way, as long as a lawyer and his client are willing to prostitute themselves by false assertions in summary judgment and other papers, allowing their case to continue rather than be dismissed, that should somehow immunize them from Rule 11 sanctions. For that to be the guiding principle underlying Rule 11 would truly be astounding.

In making this specious argument, petitioner also contends that because the District Court did not impose sanctions upon him at the time of the motion for summary judgment, sanctions thereafter were not warranted. This is absolute nonsense. The District Court, in denying summary judgment, found that the papers submitted by petitioner and

his client raised "an issue of fact" that required the denial of summary judgment, but nevertheless warned petitioner and his client about the imposition of sanctions under Rule 11. Secondly, defendants did not make a motion at that time for the imposition of sanctions. Such a motion was made only after the conclusion of the case in 1986.

To the extent that petitioner relies upon cases which suggest that sanctions should not be imposed after trial when a party has previously survived a summary judgment motion, those cases are not in any way supportive of petitioner's position here. None of the cited cases involved blatantly false misrepresentations to the Court on the summary judgment motion, without which the motion would have been granted, which is precisely the case here. Indeed, one of the very cases cited and relied upon

by petitioner made a point in its decision of distinguishing the instant case. In Media Duplication Service v. HDG Software, Inc., 928 F.2d 1228, 1240n (1st Cir. 1991), the First Circuit stated:

> "Significantly, ... in Calloway, it was eventually revealed that the central basis for opposing summary judgment - an affidavit prepared for a party by its attorney - stated a material fact for which there had never been any basis."

If there are cases that hold that Rule 11 sanctions are not warranted when an attorney and his client have been clever and dishonest enough to survive a summary judgment by submitting papers with false statements in them (and we are aware of none), then we would welcome this Court's intervention and the granting of certiorari so that the proper rule of law could be pronounced. We do not believe, however, that the Federal Judiciary or the Federal Bar needs such a

pronouncement, since the rule of law is so obvious.[8]

D. The Court of Appeals did not exceed or disregard its mandate here.

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[8]Leflore also contends that the amount of the sanctions, representing about 20% of the defendants' attorneys fees, was unjustified because it failed to take into account various discovery motions that were made during the course of the litigation. What he fails to reveal is that the principal focus of the discovery motions was an effort by the defendants to get to the bottom of the claim of forgery and to determine whether there was any expert testimony to support it. Discovery motions were necessary only because of Mr. LeFlore's obfuscation and deceit in failing to provide this information pursuant to discovery demands. The District Court, which had to deal with these matters on an ongoing basis during this litigation, observed in its August 1, 1986 opinion:

"During discovery, the defendants sought to obtain this evaluation by Calloway's document examiner, yet none of the relevant interrogatories were meaningfully answered by the plaintiff."

The Court of Appeals determined that the District Court's award was not excessive and was not an abuse of discretion (56a). See, Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 110 S.Ct. 2447 (1990).

When the motion for sanctions was made in the District Court in 1986, petitioner represented himself and his client in connection with the motion. Neither petitioner nor his client submitted an affidavit in opposition to the motion for sanctions, nor did they testify at the hearing that was held.

Petitioner's client has since died. Petitioner now seeks to place the blame solely upon his client for the violation of Rule 11, and argues that the Court of Appeals and the District Court violated this Court's holding in Business Guides, Inc. v. Chromatic Communication Enterprises, Inc., 498 U.S. 533, 111 S.Ct. 922 (1991), by making petitioner jointly and severally liable for the sanctions that were imposed upon his client.

Petitioner made the identical argument to the Court of Appeals in

connection with its decision dated November 9, 1993 (Appendix E). The Court of Appeals properly distinguished the Business Guides case and found that its holding was not pertinent to the instant case, for the reasons expressed at 175a - 180a. While this Court in Business Guides held "that a represented party who signs his or her name bears a personal non-delegable responsibility to certify the truth and reasonableness of the document" (498 U.S. at 547), neither this ruling nor the plain language of Rule 11 ("...or both...") precludes the imposition of joint and several liability upon both the party and his attorney for violation of Rule 11. Indeed, while petitioner relies upon and quotes from this Court's decision in the Business Guides case, he fails to include the following quotation which supports the result reached below:

> "Where a represented party appends its signature to a document that a reasonable inquiry into the facts would have revealed to be without merit, we see no reason why a District Court should be powerless to sanction the party in addition to, or instead of, the attorney." (emphasis added).

111 S.Ct. at 932.

Petitioner's emphasis, after his client's death, upon the fact that his client signed an affidavit in opposition to the summary judgment motion (which petitioner himself prepared - 20a), ignores the fact that it was petitioner who signed the amended complaint in mid-1983, which first made the accusations of forgery. It also ignores the fact that it was petitioner as well who signed:

- A memorandum of law in opposition to defendants' motion to dismiss filed October 19, 1983, which reiterated the accusations of forgery

- A memorandum of law dated April 2, 1984 in opposition to defendants' motion for summary judgment

- A Rule 3(g) statement filed by

petitioner in April 1984 in connection with the summary judgment motion

. A reply memorandum of law dated May 3, 1984

. Responses to interrogatories dated June 3, 1985

. An undated pre-trial order served on March 25, 1986

Each of the foregoing papers was signed by petitioner, and each reiterated the baseless claim of forgery of the June 8, 1981 agreements, unnecessarily prolonging this litigation.[9]

Finally, there is no merit to petitioner's argument that the Court of Appeals "disregarded this Court's other controlling decisions" in permitting

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[9]Although the rulings of the District Court and the Court of Appeals in this case were consistent with this Court's determination that "any interpretation [of Rule 11] must give effect to the Rule's central goal of deterrence" (Cooter & Gell, 110 S.Ct. at 2454), Mr. Leflore's total lack of remorse or regret obviously continues to this day.

joint and several liability to be imposed by the District Court against petitioner on behalf of all defendants. While this ruling did not in any way violate this Court's instructions or other controlling decisions, even if petitioner were correct, it would simply mean that the Marvel defendants would have a greater share of the award, and would have no practical effect upon petitioner himself. Such an issue hardly merits the attention of this Court.

Yet in advancing this argument, Mr. Leflore once again misstates the record. In its August 12, 1988 opinion, the Second Circuit sua sponte reinstated Calloway's appeal and stated:

> "Whether LeFlore and the firm should be jointly and severally liable for sanctions imposed on Calloway, in addition to the separate judgment against them, however, does fairly arise from Calloway's appeal." (emphasis added)(58a).

Thus, whether Peter Shukat or Michael

Klein took a separate cross-appeal is immaterial, since the issue was raised by Calloway's reinstated appeal.

CONCLUSION

It is respectfully submitted that the Writ of Certiorari sought herein should be denied, with costs and disbursements to the undersigned defendants, and such other relief as is just and proper.

Dated: April 20, 1994

Respectfully submitted,

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